

**REMARKS**

Claims 1-52 are all the claims pending in the application.

**I. Claim Rejections – 35 USC §101**

The Examiner rejected Claims 1 – 31 under 35 USC §101 as not tangible, indicating that the “automatic messaging client launcher” is merely a software program.

The Applicant hereby amends Claims 1- 31 to express the rejected claims as a computer-based system for automatically launching a messaging client in a communication device with a memory, in order to fall within the statutory definition of 35 USC §101. No new matter has been added.

**II. Claim Rejections - 35 USC §112**

The Examiner rejected Claims 37 and 38 under 35 USC §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Specifically, the Examiner noted that Claims 37 and 38 are indefinite since they depend upon method claims, but are directed to an “automatic client messaging launcher.”

The Applicant has reviewed these claims and herein submits amended claims that are restated as method claims. No new matter has been added.

**III. Claim Rejections – 35 USC §102**

The Examiner rejected Claims 1-6, 19, 21-28, 30-42, 44, and 46-52 under 35 USC

§102(b) as being unpatentable over Dhara et al. (US 2004/0005042) (hereinafter “Dhara”).

The Applicant first notes that although the heading above Section 7 of the Office Action lists “35 USC §102,” and the quoted statute thereafter is §102(b), the Examiner lists 35 USC §103(a) in the first sentence following the quoted statute. The Applicant assumes this §103(a) reference is a typographical error, and will respond to the rejections as if they were made under 35 USC §102(b).

The Applicant respectfully disagrees with the Examiner, and for at least the reasons set forth below, does not believe that Dhara anticipates the claims of the present invention.

#### Claim 1

Regarding Claim 1, the Examiner first states that “Dhara discloses an automatic messaging client launcher for a communication device (i.e. called party) for automatically launching a messaging client (i.e. send an instant message) of an originating device (i.e. calling party cellular telephony device 106)....” However, Dhara does not disclose an automatic messaging client launcher where the messaging client is launched from an *originating device*. Rather, Dhara discloses the ability of a called party, or the *destination device*, to initiate contact and communicate with a calling party, or originating device. As mentioned in Dhara, paragraph [0023], “[a]dditionally, *called party dialog instance 132* may send an instant message to *calling party cellular telephony device 102* to indicate the called party’s busy status, to give an alternative time to call, or to send another message.” (emphasis added). The call notification system of Dhara therefore works exactly the opposite as the

messaging client launcher of the present invention. While Dhara is directed to providing options for a called party to send particular types of messages to the calling party, the present invention is directed to a calling party sending messages to an unavailable called party.

The Applicant additionally points out that the remainder of the preamble of Claim 1 states that the client launcher automatically launches a messaging client of an originating device “calling a destination communication device.” This phrase further emphasizes the difference between Dhara and the present invention, in that the originating device launches the automatic messaging client launcher, unlike Dhara.

The Examiner further states that the calling party dialog instance of Dhara discloses the availability detector of Claim 1 “for detecting availability of said destination device.” However, the cited paragraph [0032] of Dhara discloses how the “called party dialog sends a ‘busy’ notification to the calling party dialog 212....” Again, Dhara discloses a different system where the *called party* sends notifications to the *calling party*, unlike the present invention, where the availability detector of the originating device (calling party) detects the availability of the destination device (called party). Therefore, Dhara also fails to disclose the availability detector of Claim 1.

The Examiner also states that Dhara discloses the messaging initiator associated with the availability detector for launching the messaging client when the destination device is unavailable. The Examiner takes note that the Office construes the phrase “launching the messaging client” to mean “sending a message to the client to display a pop-up window on the client device” when said destination device is unavailable, “(i.e. called party dialog 132 may send an instant message to calling party device 102 to indicate the called party’s busy

status).” However, the messaging initiator of the present invention does not send an instant message to a calling party device. As stated in paragraph [0039] of the present application, “the communication device messaging client 130 opens with an input screen. The input screen is displayed to the device user, for user input of message content.” The messaging client of the present invention launches only an input screen for the user to input a message, unlike Dhara, where the called party dialog 132 sends a message to the calling party device.

Furthermore, as mentioned above, in Dhara, the called party dialog 132 sends a message to the *calling party* device 102, whereas the present invention is designed to send a message from the *called party* to the *calling party*.

Therefore, as none of the elements of Claim 1 are disclosed by Dhara, the Applicants believe that Claim 1 is allowable over the cited prior art.

Claims 1-6, 19, 21-28, 30-42, 44, and 46-52: General Comments

Based upon the arguments set forth above with regard to Claim 1, the Applicant does not believe Dhara discloses the elements of Claims 1-6, 19, 21-28, 30-42, 44, or 46-52. Specifically with regard to the independent claims 1, 22, 32, 46, and 51, Dhara does not disclose the common elements of an automatic messaging client launcher on an originating device that is calling a destination device. Neither does Dhara disclose the availability detector or messaging initiator of the present invention. As the elements of the independent claims are not disclosed in Dhara, neither can the elements of the dependent claims be disclosed in Dhara, either.

For at least these reasons, the Applicant respectfully requests that all the claim rejections under 35 USC §102 be withdrawn, and the claims timely allowed.

### Claim 3

The Examiner states that Dhara discloses providing destination device addressing information to the messaging client, and cites to the transmittal of “instructions,” which the Examiner cites reference numeral 210 to represent. However, as discussed in Dhara, paragraph [0032], these “instructions” are not destination device addressing information, but the current status of the called party’s telephony device. The destination device addressing information of the present invention includes, in one embodiment, the telephone number of the unavailable called party, as stated in paragraph [0037] of the present application.

Therefore, the Applicant does not believe that Dhara discloses the elements of Claim 3, and respectfully requests that the rejection of Claim 3 be withdrawn.

## **IV. Claim Rejections – 35 USC §103**

The Examiner rejected Claims 7-18 and 20 under 35 USC §103(a) as being unpatentable over Dhara. The Examiner also rejected Claims 29, 43, and 45 for similar reasons.

With regard to the rejections of Claims 7-18, 20, 29, 43, and 45, the Applicant refers the Examiner back to the arguments presented in Section III above. As the Applicant believes that the independent claims 1, 22, 32, 46, and 51 are allowable over the prior art, the

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Applicant asserts that Claims 7-18, 20, 29, 43, and 45, which depend upon these independent claims, are therefore also allowable over the prior art.

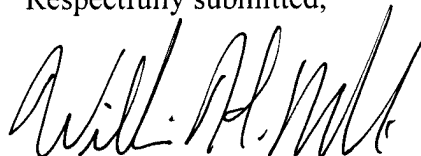
The Applicant therefore respectfully requests the Examiner withdraw the rejections of Claims 7-18, 20, 29, 43 and 45.

#### **V. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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